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Piet Eeckhout

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Series Editor's Foreword

The foreign policy ambitions of the European Union are evident from Articles 3(5) and 21 of the TEU and from the fact that, as Professor Eeckhout aptly puts it, there now appear to be virtually no significant areas of international law-making in which the Union cannot participate.

In this respect at least, the Union is not obviously out of step with the popular will. The pooling of national sovereignty over external trade seems barely to feature on the standard eurosceptic list of complaints, in recognition perhaps of the influence that comes with being part of one of the world's largest trading blocs. Almost two thirds of those questioned in a 2010 Eurobarometer survey said that they favoured a common foreign policy for the 27 Member States of the European Union, as against 25 per cent who were opposed. Imperfect as the reality may be, the principle of common external action appears to have a fair degree of support.

The emergence of the Union as a fully-fledged actor on the international stage has, however, been attended by almost constant legal conflict over competence, the major protagonists being the European Commission on the one hand and Member States on the other. This book functions, in part, as a definitive military history of that forty years' war, ranging from the dramatic early breakthroughs of *ERTA* and *Opinion 1/76* and the set-piece battles of *Opinion 1/94* and *Open Skies* to more recent skirmishes over such vitally important matters – to those involved – as whether it is open to a Member State to propose a pollutant for regulation in an international forum where the Commission is also represented.

More interesting still is the author's analysis of the effects of international law in the Union's legal order. He defends the Court of Justice against the fashionable charge of parochialism, in relation to both its refusal to accord direct effect to the WTO (though he draws the line at the Court's failure to give effect to WTO dispute resolution decisions) and its treatment of the UN Charter in the first *Kadi* case – to which he made a decisive contribution on Mr Kadi's behalf before the Court of Justice. His verdict that the Union is an exporter of international co-operation will not find favour everywhere but is soundly argued. It will be interesting to see what happens when, perhaps in an ECHR context, the Court of Justice is asked for the first time to accept that it is bound by the ruling of another supranational court.

Impressive, to the practitioner, is the author's shrewdness in identifying future *causes célèbres*. What to make of the reference to fair as well as free trade in Article 5 TEU? What will happen to 1200 bilateral investment treaties, now that some of the matters they regulate fall within the exclusive competence of the Union? Is shared competence the new exclusive competence? Should the degree of

protection accorded to those whose assets are frozen depend on the underlying justification for the sanction? Will the attempt to make a judge-free Alsatia of the Common Foreign and Security Policy survive the exercise of the Court's power in Article 40 TEU to patrol its borders?

Such questions will no doubt be addressed as the Lisbon Treaty beds down. In the meantime, it is a pleasure to welcome the second edition of this essential book, its range and utility amply reflected in its new title.

David Anderson
February 2011

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